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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 DOUGLAS MACKENZIE, ) Case No. SA CV 15-01033-VBF-JC  
12 Petitioner, )  
13 v. ) ORDER  
14 PAM AHLIN, ) Dismissing Wholly Unexhausted  
15 Respondent. ) Habeas Corpus Petition without  
16 ) Prejudice; and  
17 ) Denying a Certificate of Appealability

18 On June 11, 2015, Douglas MacKenzie (“petitioner”), a civil detainee who is  
19 proceeding *pro se*, filed a Petition for Writ of Habeas Corpus (“Petition”) in the  
20 United States District court for the Eastern District of California (“EDCA”),  
21 challenging civil-commitment proceedings under California’s Sexually Violent  
22 Predator Act (“SVPA”) which are ongoing in Orange County Superior Court. The  
23 matter was transferred to this district. As explained below, the Court will dismiss the  
24 petition without prejudice because it is wholly unexhausted and because it is  
25 appropriate to abstain from the exercise of jurisdiction pursuant to *Younger v. Harris*,  
26 401 U.S. 37, 91 S. Ct. 746 (1971). The Court will then enter judgment by separate  
27 document and deny petitioner a certificate of appealability.

28 Principles of comity and federalism require that a federal court not entertain  
pre-trial challenges to a state-court matter unless the petitioner shows that he has

1 exhausted available state judicial remedies. *See Braden v. 30th Judicial Circuit Ct.*  
2 *of Ky.*, 410 U.S. 484, 489, 93 S. Ct. 1123 (1973) (exhaustion of state remedies “is a  
3 judicially crafted instrument which reflects a careful balance between important  
4 interests of federalism and the need to preserve the writ of habeas corpus as a swift  
5 and imperative remedy in cases of illegal restraint or confinement.”); *Carden v.*  
6 *Montana*, 626 F.2d 82, 83-84 (9th Cir. 1980) (“As an exercise of judicial restraint, .  
7 . . . federal courts elect not to entertain habeas corpus challenges to state court  
8 proceedings until habeas petitioners have exhausted state avenues for raising federal  
9 claim[s].”). Here, it plainly appears from the face of the petition that petitioner has  
10 presented his current claims only to the Orange County Superior Court, not to any  
11 higher court such as the California Supreme Court. *See* Petition at 3-5.

12 **Thus, the petition is wholly unexhausted, and dismissal without prejudice**  
13 **for lack of exhaustion is required.** *See Jiminez v. Rice*, 276 F.3d 478, 481 (9th Cir.  
14 2001) (“[T]he district court was ‘obliged to dismiss immediately’, as the petition  
15 contained no exhausted claims.”) (citing *Greenawalt v. Stewart*, 105 F.3d 1268, 1274  
16 (9th Cir. 1997)) (emphasis added); *Hernandez v. Holland*, 2015 WL 1951943, \*2  
17 (C.D. Cal. Apr. 28, 2015) (Josephine Staton, J.) (“None of the claims in the Petition  
18 ha[s] been presented to the California Supreme Court. Thus, the Petition contains  
19 only unexhausted claims, and it *must* be dismissed without prejudice.”) (footnote  
20 omitted) (emphasis added); *Romero v. Lewis*, 2010 WL 5579886, \*3 (C.D. Cal. Dec.  
21 8, 2010), *R&R adopted*, 2011 WL 124652 (C.D. Cal. Jan. 13, 2011) (Valerie Baker  
22 Fairbank, J.); *see also Coleman v. Thompson*, 501 U.S. 722, 731, 111 S. Ct. 2546  
23 (1991) (pre-AEDPA decision) (“This Court has long held that a state prisoner’s  
24 federal habeas petition should be dismissed if the prisoner has not exhausted state  
25 remedies as to any of his federal claims.”); *Rasberry v. Garcia*, 448 F.3d 1150, 1154  
26 (9th Cir. 2006) (post-AEDPA decision) (“Once a district court determines that a  
27 habeas petition contains only unexhausted claims, it need not inquire further as to the  
28 petitioner’s intentions. Instead, it may simply dismiss the habeas petition for failure

1 to exhaust.”).<sup>1</sup>

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3 **Alternately, except under narrow circumstances, federal courts abstain**  
4 **from interfering with pending state criminal proceedings.** *See Younger*, 401 U.S.  
5 37; *Drury v. Cox*, 457 F.2d 764, 764-65 (9th Cir. 1972); *see also* 28 U.S.C. § 2283  
6 (federal courts may not enjoin state-court proceedings except in narrow specified  
7 circumstances). The principles announced in *Younger* apply equally to pending state  
8 civil proceedings where “important state interests are involved.” *Middlesex Cty.*  
9 *Ethics Committee v. Garden State Bar Ass’n* (“*Middlesex*”), 457 U.S. 423, 432, 102  
10 S. Ct. 2515 (1982) (citations omitted); *see also Gilbertson v. Albright*, 381 F.3d 965,  
11 975 (9th Cir. 2004) (en banc) (*Younger* principles apply to pending state civil  
12 proceedings that are judicial in nature, implicate important state interests, and afford  
13 an adequate opportunity to present federal constitutional challenges); *see, e.g.,*  
14 *Dannenberg v. Nakahara*, 1998 WL 661467, \*1-\*2 (N.D. Cal. Sept. 22, 1998)  
15 (applying *Younger* abstention where habeas petition essentially asked federal court  
16 “to step into the middle of a state civil [SVPA] commitment proceeding. . .”).

17 *Younger* abstention is appropriate in civil cases where (1) the state judicial  
18 proceedings are ongoing; (2) the proceedings implicate important state interests; and  
19 (3) the state proceedings provide an adequate opportunity to raise constitutional  
20 challenges. *See Middlesex*, 457 U.S. at 432; *Kenneally v. Lungren*, 967 F.2d 329,  
21 331-32 (9th Cir. 1992). When all three of the *Younger* criteria are met, a court must  
22 abstain and dismiss the federal action without prejudice, absent extraordinary or  
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25 “The stay and abeyance procedures discussed in *Rhines v. Weber*, 544 U.S.  
26 269, 276, 125 S. Ct. 1528 . . . (2005) and *Kelly v. Small*, 315 F.3d 1063 (9th Cir.  
27 2003) apply only to mixed petitions containing both exhausted and unexhausted  
28 claims.” *Hernandez*, 2015 WL 1951943 at \*2 n.3 (citing *King v. Ryan*, 564 F.3d  
1133, 1138-40 (9th Cir. 2009) and *Jackson v. Roe*, 425 F.3d 654, 659-61 (9th Cir.  
2005)).

1 special circumstances which pose a great and immediate threat of irreparable injury.  
2 *See Kenneally*, 967 F.2d at 331 (*Younger* requires courts to abstain and dismiss  
3 federal actions that seek to enjoin state proceedings “unless one of the recognized  
4 exceptions to *Younger* is present”); *see also Colorado River Water Conservation*  
5 *Dist. v. United States*, 424 U.S. 800, 817 n.22, 96 S. Ct. 1236 (1976) (*Younger*  
6 abstention not discretionary once conditions met); *Beltran v. State of California*, 871  
7 F.2d 777, 782 (9th Cir. 1988) (“*Younger* abstention requires *dismissal* of the federal  
8 action.”) (citations omitted, emphasis in original). Here, all three criteria for *Younger*  
9 abstention are present and petitioner has not demonstrated that his is one of the  
10 extraordinary cases where an exception to *Younger* abstention is present.

11 First, it is apparent from the face of the Petition (Pet. at 1; Pet. Memo at 2) that  
12 SVPA proceedings were ongoing when petitioner filed the instant petition. *See*  
13 *Beltran*, 871 F.2d at 782 (for purposes of *Younger* abstention analysis, the pendency  
14 of state proceedings is determined “at the time the federal action was filed”).

15 Second, the SVPA proceedings implicate important state interests (*i.e.*,  
16 protection of the public from sexual predators). *See Hubbart v. Superior Court*, 969  
17 P.2d 584, 19 Cal. 4th 1138, 1153 n.20 (Cal. 1999) (SVPA proceedings serve  
18 “compelling” state interests of protecting the public and providing needed mental  
19 health treatment); *Dannenberg*, 1998 WL 661467 at \*2 (“[SVPA] commitment  
20 proceedings involve the important state interest of protecting the public from sexual  
21 predators.”) (citation omitted).

22 Third, abstention is appropriate because California SVPA proceedings provide  
23 an adequate opportunity to raise constitutional challenges. Under this third *Younger*  
24 criterion, abstention is required unless petitioner can demonstrate that state law  
25 “clearly bars” the assertion of his federal constitutional claims in the pending SVPA  
26 proceedings. *See Middlesex*, 457 U.S. at 432 (citation omitted). Here, petitioner  
27 essentially complains that his designation as a sexually violent predator is based on  
28 unreliable evidence, that his attorney in the SVPA proceedings has refused to so

1 argue and is ineffective, and that the Superior Court has refused to remove such  
2 counsel. Petitioner fails to demonstrate that his federal constitutional claims cannot  
3 be adequately addressed either in the pending SVPA proceedings in Superior Court  
4 (to the extent the Superior Court has not already addressed them), or on any direct  
5 appeal therefrom. *See, e.g., In re Smith*, 42 Cal. 4th 1251, 178 P.3d 446 (Cal. 2008)  
6 (addressing claim that continuation of SVPA proceedings after felony conviction  
7 upon which SVPA petition was based was reversed on appeal violated prospective  
8 SVPA committee's constitutional rights to due process and equal protection); *People*  
9 *v. Taylor*, 174 Cal. App. 4th 920 (Cal. App. 2009) (addressing due process, equal  
10 protection, double jeopardy, and ex post facto challenges to SVPA commitment);  
11 *People v. Hubbart*, 88 Cal. App. 4th 1202, 1208-09 (Cal. App. 2001) (noting that trial  
12 court and California Supreme Court considered, and rejected on the merits, due  
13 process and equal protection challenges to application of SVPA); *People v.*  
14 *Buffington*, 74 Cal. App. 4th 1149, 1152 (Cal. App. 1999) (addressing merits of due  
15 process and equal protection challenges to SVPA).

16 Finally, although *Younger* abstention does not apply in cases where  
17 extraordinary circumstances threaten great, immediate and irreparable injury, *see*  
18 *Younger*, 401 U.S. at 45-46, 53-54 (irreparable injury shown where statute flagrantly  
19 and patently violative of express constitutional prohibitions); *Perez v. Ledesma*, 401  
20 U.S. 82, 85, 91 S. Ct. 674 (1971) (federal injunctive relief in pending state  
21 prosecutions proper in cases of proven harassment or prosecutions undertaken by  
22 state officials in bad faith without hope of obtaining a valid conviction), petitioner  
23 fails to demonstrate that this is such a case.

24 Accordingly, it is appropriate for this Court to abstain from considering  
25 petitioner's challenges to the pending SVPA proceedings and dismiss the habeas  
26 petition and this action without prejudice. *See Babinski v. Voss*, 323 F. App'x 617  
27 (9th Cir. 2009) (affirming dismissal on *Younger* abstention grounds of habeas petition  
28 challenging ongoing California SVPA proceedings); *see also, e.g., Validivia v.*

1 *Unknown*, 2015 WL 1565435, \*1-\*2 (C.D. Cal. Apr. 8, 2015) (John Walter, J.)  
 2 (holding that *Younger* doctrine called for Court to abstain from exercising jurisdiction  
 3 over state prisoner's wholly unexhausted habeas petition); *Hooper-Turner v. Folsom*  
 4 *Women's Facility*, 2014 WL 1292102, \*1-\*2 (C.D. Cal. Mar. 27, 2014) (Audrey  
 5 Collins, J.) (same); *Romero v. Lewis*, 2010 WL 5579886, \*3 (C.D. Cal. Dec. 8, 2010)  
 6 (same), *R&R adopted*, 2011 WL 124652 (C.D. Cal. Jan. 13, 2011) (Fairbank, J.).  
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### 8 ORDER

9 The habeas corpus petition is **dismissed without prejudice** to petitioner's  
 10 filing of a new federal habeas petition once his state civil-commitment proceedings  
 11 are completed and he has properly exhausted all available state-court remedies as to  
 12 all habeas claims which he wishes to raise in federal court.

13 **A certificate of appealability is DENIED.** Petitioner has not shown "that  
 14 jurists of reason would find it debatable whether the district court was correct in its  
 15 procedural ruling" on either exhaustion or *Younger* abstention grounds. *See Slack v.*  
 16 *McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595 (2000). Petitioner may seek a  
 17 certificate of appealability from the U.S. Court of Appeals for the Ninth Circuit.

18 **The Clerk of the Court shall TERMINATE the case** and all pending  
 19 motions.

20 As required by Fed. R. Civ. P. 58(a), judgment will be entered by separate  
 21 document.

22 IT IS SO ORDERED.

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 24 DATED: July 13, 2015



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26 HON. VALERIE BAKER FAIRBANK  
 27 Senior United States District Judge  
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